IN THE COURT OF APPEALS OF IOWA

No. 7-647 / 96-575

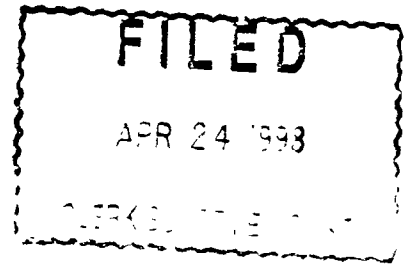
FONSO LAMONT WIRES,

Appellant,

vs.

STATE OF IOWA,

Appellee.



Appeal from the Iowa District Court for Des Moines County, John C. Miller, Judge.

Fonso Lamont Wires appeals the district court's denial of his application for postconviction relief. **AFFIRMED.**

Jeffrey M. Lipman of the Lipman Law Firm, P.C., Clive, for appellant.

Thomas J. Miller, Attorney General, Julie H. Brown, Assistant Attorney General, and Patrick C. Jackson, County Attorney, for appellee.

Considered by Streit, P.J., Vogel, J., and Habhab, S.J.*

*Senior judge assigned by order pursuant to Iowa Code § 602.9206 (1997).

HABHAB, S.J.

This appeal arises from the district court's denial and dismissal of the defendant's two applications for postconviction relief.[1] The defendant argues he was denied effective assistance of counsel at trial because 1) sheriff's personnel monitored attorney-client phone calls and conferences, 2) they divulged privileged attorney-client information to the prosecutor, and 3) his attorney failed to question sheriff's personnel properly concerning their intrusion into privileged communications.

Our review of an allegation of ineffective assistance of counsel is *de novo*. *Cox v. State*, 554 N.W.2d 712, 714 (Iowa App. 1996); *State v. Howes*, 525 N.W.2d 874, 876 (Iowa App.1994). Postconviction proceedings are provided for in Iowa Code chapter 822. Section 822.8 (1997) provides, in pertinent part:

> Any ground finally adjudicated or not raised, or knowingly, voluntarily, and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental, or amended application.

Id. Postconviction relief is not a means for relitigating claims that were or should have been properly presented at trial or on direct appeal. *Earnest v. State*, 508 N.W.2d 630, 632 (Iowa 1993).

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[1] PCLA000331, arising from CR510-591 and PCLA000330, arising from CR538-0791.

"In order to assert a claim of ineffective assistance of trial counsel in a postconviction proceeding, an applicant ... ordinarily must show that his claim was preserved for review by being made on direct appeal." *Collins v. State*, 477 N.W.2d 374, 376 (Iowa 1991). However, a claim of ineffective assistance of trial counsel may be made in a postconviction proceeding, even if not made on direct appeal, if the applicant establishes by a preponderance of the evidence "sufficient reason" or "cause" for not having raised the issue on direct appeal. *Id.*; *see also* Iowa Code § 822.8. Ineffective assistance of appellate counsel may provide sufficient reason or cause to permit the issue of ineffective assistance of trial counsel to be raised for the first time in a proceeding for postconviction relief. *Collins*, 477 N.W.2d at 376; *LeGrand v. State*, 540 N.W.2d 667, 668 (Iowa App. 1995).

The defendant made his claim concerning the monitoring of his attorney-client telephone calls and conferences in a 1991 *pro se* motion to dismiss and a subsequent 1991 motion filed by counsel. After an evidentiary hearing, the trial court found the defendant failed to prove his attorney-client privilege had been violated. The defendant did not raise this issue in either direct appeal.[2] He did not offer sufficient reason or cause to permit the issue to be raised for the first time in a postconviction relief proceeding. The defendant cannot relitigate this issue now.

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[2] *Wires v. State*, No. 91-1789, slip op. (Iowa Nov. 25, 1992) (per curiam); *Wires v. State*, No. 3-006/91-1739, slip op. (Iowa App. Mar 30, 1993).

The defendant also claims sheriff's personnel revealed privileged attorney-client information to the prosecutor and his attorney was ineffective in not properly questioning those personnel on the monitored communications at trial. Although both of these claims were known to the defendant at the time of his direct appeals, he did not raise them in either appeal. In his postconviction proceeding, the defendant did not offer sufficient reason or cause for having failed to raise the issues on appeal; nor did he prove any prejudice from the alleged errors. *See Polly v. State*, 355 N.W.2d 849, 856 (Iowa 1984); *Bettis v. State*, 547 N.W.2d 635, 637 (Iowa App. 1996).

For the reasons set forth above, we conclude the defendant is barred from raising the issues set forth in this appeal. Accordingly, we affirm the decision of the district court denying and dismissing the defendant's applications for postconviction relief.

AFFIRMED.